



ATTORNEYS AT LAW

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August 21, 2013

**RECEIVED**

**AUG 26 2013**

**ECEJ-AT**

Daniel Cimarosti  
Patsy Crooke  
United States Army Corps of Engineers  
North Dakota Regional Office  
1513 South 12th Street  
Bismarck, ND 58504

Monica Heimdal  
United States Environmental Protection Agency  
Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

Re: BIP 40 LLC  
Williston Village RV Resort  
Section 24, T155N, R101W  
Williston, Williams County, ND

Dear Mr. Cimarosti, Ms. Crooke, and Ms. Heimdal:

As you may know, our law firm represents BIP 40, LLC ("BIP 40"). BIP 40 is the owner and developer of the Williston Village RV Park in Williams County, North Dakota. During construction of that RV park, BIP 40 relied on the advice and engineering work performed by SBL Associates, Inc. ("SBL"). Despite SBL's prior advice to the contrary, BIP 40 learned in March of 2013 that part of its development had likely impacted wetlands. BIP 40 engaged Carlson McCain, Inc. to perform a wetland delineation to determine whether BIP 40 had inadvertently impacted wetlands. After Carlson McCain conducted its delineation, BIP 40 arranged a meeting with the Corps of Engineers, North Dakota Field Office, to discuss the potential impacts. On June 27, 2013, representatives of BIP 40 met with Corps of Engineers representatives to discuss these issues. At that meeting, the Corps indicated that it would require full restoration of approximately 4.5 acres of impacted wetlands rather than allowing BIP 40 to pursue a proposed conceptual mitigation plan that involved expansion of existing wetlands. I wrote to Mr. Cimarosti and Ms. Crooke the very next day – June 28, 2013 – stating that BIP 40 would await written correspondence from the Corps prior to initiating wetland restoration activities.

In early August, I contacted Mr. Cimarosti requesting an update on the status of this matter. I learned that the matter had been (or would be) referred to EPA for final resolution. On

Daniel Cimarosti, USACE  
Patsy Crooke, USACE  
Monica Heimdal, US EPA

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August 9, 2013, Mr. Cimarosti notified me that BIP 40's point of contact at EPA would be Ms. Monica Heimdal. I contacted Ms. Heimdal very shortly thereafter and learned that EPA had only recently received the file in this matter and that another two weeks may pass before EPA would even appoint an attorney to review this file.

As I have stated, BIP 40 is willing to pursue the wetland restoration activity that will likely be required. To that end, the construction season in North Dakota is rapidly drawing to a close. Unless one or both agencies involved in this matter takes expeditious action, the affected environmental resource will not be restored until sometime in 2014. This is wholly unnecessary and certainly not in the best interest of the affected environment. As you know, the sooner the restoration activity takes place, the sooner the affected environmental resources may resume serving their important functions for the local ecology. Furthermore, BIP 40 has initiated a legal process against SBL in this matter and intends to hold SBL fully responsible for the ultimate costs of restoration. Along those lines, BIP 40 needs clarity from the agencies about the appropriate resolution in this matter. The sooner this clarity is provided, the better.

For the reasons stated, BIP 40 is requesting authorization from the Corps and from EPA to begin restoration activities in this matter immediately. We recognize that a formal Consent Agreement or other legal mechanism will be necessary to outline the parties' rights and responsibilities. BIP 40 is willing to initiate the restoration process now and assures you its full reasonable cooperation in executing documentation necessary to formalize the ultimate resolution to the alleged violation. Please consider BIP 40's request to initiate restoration activities immediately and, if you agree to this request, please provide me with a written acceptance of it as soon as possible.

If you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,

Brunini, Grantham, Grower & Hewes, PLLC



John A. Brunini

Cc: BIP 40, LLC